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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,150	03/26/2004	Shelley A. DiGirolamo		8371

7590 09/08/2005

Jensen & Puntigam, P.S.
Suite 1020
2033 Sixth Avenue
Seattle, WA 98121

EXAMINER

SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,150

Applicant(s)

DIGIROLAMO, SHELLEY A.

Examiner

Robert G. Santos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 10 and 11 are objected to because of the following informalities:
 - 1) In claim 1, line 12: The phrase --at least-- should be inserted before the term "one".
 - 2) In claim 1, line 14; claim 10, line 16; and in claim 11, line 2: The phrase --at least one-- should be inserted before the term "chamber".Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Beier '035. As concerns claims 1, 10 and 11, Beier '035 shows the claimed limitations of a pillow kit (10) comprising a cover assembly (12) which includes substantially identical top and bottom portions, at least one of which has an outer layer (20, 22) and an inner layer (28), the top and bottom portions including spaced longitudinal sides and end sides, wherein the top and bottom portions are secured around the peripheries thereof except for one side; means for selectively opening and closing (14) the one side; at least one chamber section (the entire interior of element

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12) located interiorly of the cover assembly; loose filling (33) located within the at least one chamber section; and at least one core member (34), constructed to be insertable into and removable from the at least one chamber section. With regards to claims 2-4, the reference discloses the use of a plurality of chamber sections (30, 32) extending for substantially the entire length of the pillow (as shown in Figure 4) and a plurality of inserts (33, 34) adapted for insertion therein, wherein filling is located within all the chamber sections (as shown in Figure 3). As concerns claims 5, 6 and 9, the reference is considered to show conditions wherein the inserts (33, 34) have different support characteristics including differences in fill weight and wherein the pillow filling is synthetic material in column 2, lines 25-29 & 59-68 and in column 3, lines 1-3.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beier '035 in view of Graebe '168. Beier '035 does not specifically disclose the use of cotton, polyester and feathers. Graebe '168 provides the basic teaching of a pillow (10) comprising a covering (12) made from two layers (16, 18) of batting (28) and two layers of fabric (30A), wherein the fabric may comprise cotton and spandex fibers (see column 4, lines 33-35) and the batting is preferably comprise polyester fiber (see column 4, lines 1-5). Graebe '168 further discloses that pillows are

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generally constructed from materials such as goose down (see column 1, lines 20-27). The skilled artisan would have found it obvious at the time the invention was made to modify the pillow kit of Beier '035 to include materials such as cotton, polyester and feathers since such materials are commonly used in the art of constructing as taught by Graebe '168.

Response to Amendment

In response to Applicant's argument on page 6 of her amendment stating that "there is no loose filling within the chamber which also contains the removable member", the examiner respectfully disagrees since the entire interior of the cover assembly could be interpreted as being the at least one chamber as claimed. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Furthermore, Applicant's arguments on page 6 of her amendment concerning claims 10 and 11 are of no consequence as these arguments attack the references individually; the examiner respectfully maintains that the Graebe '168 reference is used to teach the limitation wherein at least one of the top and bottom portions of the cover assembly includes outer and inner layers. Where the rejection is a combination of references, Applicant(s) cannot show unobviousness by so attacking the references. *In re Young et al.*, 56 CCPA 757, F.2d 754, 159 USPQ 725.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pittman '677, Boyd et al. '397, Buoncore '894, Woller '173, Sprague, Jr. '275, O'Sullivan '248, Michaelsen et al. '088, Ceriani '636, Kanowsky et al. '675, Shave '918,

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Stewart '577, Unger '414, Marsh et al. '435, Jessup '333, Marsh et al. '346, Lustig '389, Doak '182, Wertheimer '266, Lenz '493 and Jones '087.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
September 5, 2005